IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.71899-M of 2006

Date of Decision: November 17, 2006.

Kulwant Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

PRESENT: Mr.D.S.Pheruman, Advocate,
for the petitioner.

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This petition has been filed under Section 482 of the Code of Criminal Procedure seeking directions for Additional Sessions Judge, Amritsar for disposing the application for pre-arrest bail filed by the petitioner and pending before him since 20.4.2006.

The petitioner, who is an accused of an offence under Sections 409/467/468/471 IPC in an FIR registered at the instance of Vigilance Bureau, Jalandhar, has filed an application under Section 438 Cr.P.C. before the Sessions Judge for grant of anticipatory bail with a prayer for grant of ad-interim bail during the pendency of said application. This application was filed on 19.4.2006. The grievance made in the present petition is that case was taken up for hearing on 20.4.2006, 26.4.2006, 4.5.2006, 18.5.2006, 18.7.2006, 8.8.2006, 11.9.2006, 12.10.2006 and

6.11.2006, but no interim order has been passed protecting the liberty of the petitioner. The orders passed on the above-mentioned dates by Addl.Sessions Judge, Amritsar have been re-produced in the petition and perusal of the same would show that the case is being adjourned on the ground that the trial Court file, which was summoned, was not being received. Order dated 18.5.2006 would also show that Additional Public Prosecutor had informed the Court that the accused had been declared as a proclaimed offender and accordingly the Addl.Sessions Judge had felt it necessary to summon the record of the Judicial Magistrate Ist Class, Patti. The case is now fixed for 18.11.2006. The petitioner has also disclosed that he had earlier filed Criminal Misc.No.67850-M of 2006 seeking grant of anticipatory bail before this Court. The said petition was listed before this court and on a query raised by the Court as to how the petitioner can maintain two applications seeking anticipatory bail before this Court as well as before the Court of Addl.Sessions Judge, the said petition was got dismissed as withdrawn on 13.11.2006. It is in this background that now the petition under Section 482 Cr.P.C. has been filed seeking directions to dispose of the prayer of the petitioner for interim direction pending before the Addl.Sessions Judge, Amritsar. An interim direction has also been sought from this Court directing the Investigating Agency to release the petitioner on bail by accepting his bail bonds during the pendency of this petition.

The manner in which the relief has been claimed in this petition would clearly show that this is an attempt to seek pre-arrest bail under the garb of a petition under Section 482 Cr.P.C. Once the petitioner was unable to satisfy the Court about his right to maintain two petitions for grant of

anticipatory bail before this Court as well as before the Court of Addl.Sessions Judge, he cannot be permitted to file the present petition seeking the same or similar relief by terming the petition as one under Section 482 Cr.P.C. It is a settled principle of law that the provisions of Section 482 Cr.P.C. are not to be invoked when there is a specific provision in the Code for redressal of grievances of aggrieved party. In other words, it cannot be invoked in respect of any matter covered by the specific provisions of the Code. The grant of anticipatory bail is covered by the provisions of Section 438 Cr.P.C. and accordingly this petition under Section 482 Cr.P.C. seeking the same relief cannot be held maintainable. It has also been viewed that it would be inappropriate to exercise inherent jurisdiction/power when Court refuses relief by exercising discretion. Adhukar Vs. Talab Haji Hussain, AIR 1958 Bombay 406 can be seen in this regard. It seems that the petitioner is making an attempt to over reach the Court. He could not satisfy the Court about his right to maintain prayer for anticipatory bail filed through Crl.Misc.No.67850-M of 2006. He cannot be permitted to achieve the same object by filing another petition and giving it a different colour by invoking the provisions of Section 482 Cr.P.C. The attempt of the petitioner to seek direction for disposal of his bail application pending before the Addl.Sessions Judge, Amritsar also cannot be appreciated. The petitioner has not denied the fact that he had been declared as a proclaimed offender, a fact, which has been disclosed before the Court of Addl.Sessions Judge, Amritsar. Sessions Court is fully justified in calling for the record of this case from Judicial Magistrate Ist Class, Patti before passing any order. If this mode being adopted by the petitioner is permitted, it can lead to un-fair consequences. It can well be assumed that person

would first ensure that record of the case is some-how got misplaced and thereafter would seek relief in the absence of the same. Even if such a power may be available for exercise jurisdiction under Section 482 Cr.P.C. for issuing the direction of the nature as has been sought, I am not inclined to interfere in this case. It is rather disturbing to notice that the petitioner, who has not got any protection from the Court in regard to stay of his arrest and has been declared proclaimed offender since 1999, is not being proceeded against by the police in any effective manner. Needless to say that the petitioner has been able to evade justice since 1995, which is stated to be the date of offences in the present case. This petition is rather mis-conceived in facts as well as law. No case for interference is made out.

Dismissed.

November 17, 2006 (RANJIT SINGH)
ramesh JUDGE